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Filing date: **02/21/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91165519
Party	Defendant Anncas, Inc.
Correspondence Address	JESUS SANCHELIMA, ESQ. SANCHELIMA & ASSOCIATES, P.A. 235 S.W. LE JEUNE ROAD MIAMI, FL 33134-1762 UNITED STATES
Submission	Opposition/Response to Motion
Filer's Name	Jesus Sanchelima
Filer's e-mail	legalassist@sanchelima.com
Signature	/js/
Date	02/21/2008
Attachments	080221.ResM-Strike.pdf (9 pages)(2068674 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CORPORACION HABANOS, S.A.,

Opposer,

v.

ANNCAS, INC.,

Applicant.

Opposition No. 91165519

**RESPONSE TO OPPOSER'S MOTION TO STRIKE APPLICANT'S
NOTICE OF RELIANCE AND EXHIBITS LISTED THEREIN**

Pursuant to 37 CFR § 2.127(a), Applicant, **ANNCAS, INC.** ("Applicant"), by and through undersigned counsel, hereby files its response to *Opposer's Motion to Strike Applicant's Notice of Reliance and Exhibits Listed Therein* ("Motion to Strike"), and states the following in support thereof.

1. In Opposer's Motion to Strike, counsel for Opposer alleges that he did not receive a copy of the Notice of Reliance and Exhibits, and that said exhibits were untimely filed with the Board. Opposer further alleges non-compliance with TTAB Rule regarding compliance with Certificates of Mailing.

2. On November 14, 2007, during the taking of the trial testimonies of William Bock and Benjamin Gomez, a copy of all the exhibits to said testimonies, which are the same as the attachments to the subject Notice of Reliance, were personally delivered to Mr. Goldstein by paralegal Perez of the office of undersigned, as attested thereto in his affidavit attached hereto and incorporated herein as Exhibit "A."

3. On November 26, 2007, the office of the undersigned served counsel for Opposer, David Goldstein, with another copy of all exhibits being relied upon by Applicant. This is the communication that Mr. Goldstein alleges that his office did not receive. Attached please see cover letter to Mr. Goldstein of November 26, 2007, referencing the documents, attached hereto and incorporated herein as Composite Exhibit "B."

4. In Opposer's subject Motion to Strike, it alleges that the certificate of service was not in compliance with TTAB Rules. 37 CFR § 2.197 states in pertinent part regarding the Certificate of Mailing or Transmission Procedure:

"(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Office, and an application is abandoned, a registration is cancelled or expired, or a proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence within two months after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

(c) The Office may require additional evidence to determine whether the correspondence was timely filed."

5. Assuming that counsel for Opposer's allegation, that his office did not receive this large package is accurate, does not establish that it was not sent.

6. Applicant's evidence attached hereto supports that the documents were in fact timely sent.

7. On November 30, 2007, the undersigned timely filed Applicant's Notice of Reliance and sent a copy thereof via First Class Mail to counsel for Opposer as indicated in the relevant cover letter attached hereto and incorporated herein as Exhibit "C."

8. The hard copy NOR and exhibits were not docketed by the TTAB until December 11, 2007, because they were sent to the TTAB's previous mailing address and returned to be re-sent to the new address.

9. The Affidavit, a copy of the correspondence of November 26, 2007, along with a copy of the Priority Mail envelope, clearly demonstrate that the package containing the alleged missing exhibits was timely sent to counsel for Opposer.

10. Because counsel for Opposer was in fact provided with a copy of the exhibits on November 14, 2008, and they were once again sent to him on November 26, 2007, whether he received the second set or not, renders the issue harmless and moot.

WHEREFORE, for the reasons stated above, Applicant ANNCAS prays that this Board deny Opposer's Motion to Strike Applicant's Notice of Reliance and Exhibits Listed Therein and any other relief that it deems proper.

Respectfully submitted,

SANCHELIMA & ASSOCIATES, P.A.

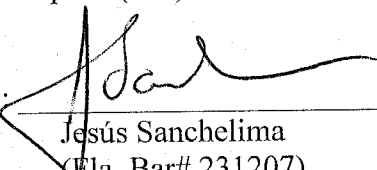
235 S.W. Le Jeune Road

Miami, FL 33134-1762

Telephone: (305) 447-1617

Telecopier: (305) 445-8484

By:



Jesús Sanchelima

(Fla. Bar# 231207)

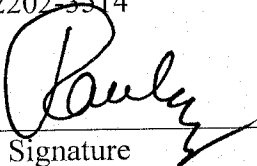
CERTIFICATE OF MAILING

I HEREBY CERTIFY that this correspondence is being deposited with the United States Postal Service with sufficient postage as First-class mail in an envelope addressed to:

David B. Goldstein and Michael Krinsky
Rabinowitz, Boudin, Standard, Krinsky
& Lieberman, P.C.
111 Broadway, 11th Floor
New York, New York 10006
Counsel for Opposer

and by electronic filing to:

Commissioner for Trademarks
2900 Crystal Drive
Arlington, Virginia 22202-3514

On 2/21/08 
Date Signature

Pablo Perez
Typed or printed name of person signing certificate

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CORPORACION HABANOS, S.A.,

Opposer,

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ANNCAS, INC.,

Applicant.

Opposition No. 91165519

**AFFIDAVIT OF PABLO PEREZ IN SUPPORT TO
APPLICANT'S RESPONSE TO OPPOSER'S MOTION
TO STRIKE APPLICANT'S NOTICE OF RELIANCE**

- I, Pablo Perez, state under oath that:
1. I am more than 18 years of age and have personal knowledge regarding the facts set forth herein.
 2. I am a paralegal employed by counsel for Applicant, Sanchelima & Associates, P.A., and was employed during all times relevant hereto.
 3. On November 26, 2007, I personally prepared and placed a copy of Defendant's Notice of Reliance ("NOR") to attorney for Opposer David Goldstein, in the United States Post Office, as indicated in the Certificate of Service of the Notice of Reliance filed with the TTAB on November 30, 2007 (Document #43). Please see copy of cover letter and envelope to Mr. Goldstein.
 4. I am responsible for compliance with the Certificate of Service and did not know the differences related to compliance with the TTAB Rules between Express, Priority and First Class Mail.
 5. A comprehensive search of my e-mails indicates that the e-mail to Mr. Goldstein was inadvertently not sent as indicated in the subject Certificate of Service.
 6. During the trial testimonies of William Bock and Benjamin Gomez, I personally provided Mr. Goldstein with one copy of all the exhibits, specifically, the same exhibits to references of the use of the words HABANA and HAVANA provided to Mr. Goldstein at the conclusion of Mr. Gomez' trial testimony.
 8. On February 5, 2008, I received a message from counsel for Opposer, David Goldstein, that he wanted to speak with me regarding "a motion." Being that I as a paralegal should not discuss technical issues regarding a case, I referred the message to the attorney in charge, Jesus Sanchelima, Esq.

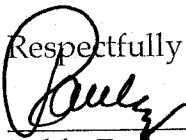
EXHIBIT

A

tabbles

9. On February 5, 2008, Mr. Sanchelima advised me that he had spoken with Mr. Goldstein and that Mr. Goldstein was alleging that he had not received a copy of the exhibits to our Notice of Reliance.

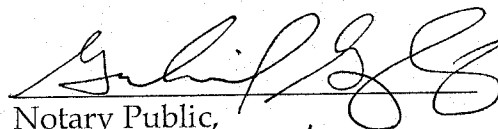
Respectfully submitted,



Pablo Perez, Paralegal for
Sanchelima & Associates, P.A.
235 S.W. Le Jeune Road
Miami, Florida 33010
(786) 942-8967

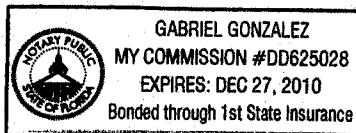
BEFORE ME, the undersigned authority, duly authorized to administer oaths and take acknowledgment, personally appeared Pablo Perez, who being to me well known, says that the foregoing Affidavit is true and correct to the best of his knowledge.

SWORN TO AND SUBSCRIBED before me, this 21st day of February of 2008.



Notary Public,
State of Florida At Large

My Commission Expires:



Sanchelima & Associates, P.A.
Attorneys at Law

Patents, Trademarks & Copyrights

Jesús Sanchelima, Reg. Pat. Attorney
Leticia Guerra, Esq.

Tel: 305-447-1617
Fax: 305-445-8484
jesus@sanchelima.com
www.sanchelima.com

November 26, 2007

David B. Goldstein and
Michael Krinsky
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C
Attorney for Opposer
111 Broadway, 11th Floor
New York, New York 10006

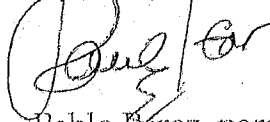
Re: *Corporacion Habanos, S.A., v. Annecas, Inc.*
Our File No: 250316

Dear Mr. Goldstein:

Please see attached Defendant's Notice of Reliance and exhibits thereto.

Thank you.

Very truly yours,

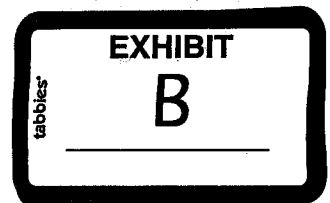


Pablo Perez, paralegal for
Jesus Sanchelima, Esq.

file

JS/pp

Enclosures: Defendant's Notice of Reliance, including exhibits



**PRIORITY
MAIL**

UNITED STATES POSTAL SERVICE (TM)

PERMIT NO. 1007, 1997

07/01/00/30-305-910V

SANCHELIMA & ASSOCIATES, P.A.
REGISTERED PATENT ATTORNEYS
235 S.W. LE JEUNE RD.
MIAMI, FLORIDA 33134-1762

TO:

David B. Goldstein

Rabinowitz, Boudin, et al.,

111 Broadway, 11th Floor
New York, New York 10006

Sanchelima & Associates, P.A.
Attorneys at Law

Patents, Trademarks & Copyrights

Jesús Sanchelima, Reg. Pat. Attorney
Leticia Guerra, Esq.

Tel: 305-447-1617
Fax: 305-445-8484
jesus@sanchelima.com
www.sanchelima.com

November 30, 2007

David B. Goldstein and
Michael Krinsky
Rabinowitz, Boudin, Standard, Krinsky & Lieberman, P.C
Attorney for Opposer
111 Broadway, 11th Floor
New York, New York 10006

Re: *Corporacion Habanos, S.A., v. Amcas, Inc.*
Our File No: 250316

Dear Mr. Goldstein:

Please see attached Defendant's Notice of Reliance.

Thank you.

Very truly yours,

Pablo Perez, paralegal for
Jesus Sanchelima, Esq.

file
JS/pp
Enclosures: Defendant's Notice of Reliance

235 S.W. LeJeune Road • Miami, Florida 33134-1762

